

PEARSON, J.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA,)	
)	CASE NO. 4:12CV0080
Plaintiff,)	
)	
v.)	JUDGE BENITA Y. PEARSON
)	
JANTZ S. CLINKSCALE, <i>et al.</i> ,)	<u>MEMORANDUM OF OPINION</u>
)	<u>AND ORDER</u>
Defendants.)	[Resolving ECF No. 4]

Pending is Defendants Jantz S. and Shelia D. Clinkscale's (the "Clinkscals") Motion to Dismiss ([ECF No. 4](#)). The Clinkscals move the Court pursuant to [Fed. R. Civ. P. 12\(b\)\(6\)](#) for an order dismissing as time-barred that portion of the Complaint ([ECF No. 1](#)) that relates to the year ending December 31, 1997. The Court has been advised, having reviewed the record, the parties' briefs¹ and the applicable law. For the reasons that follow, the Court will deny the motion.

On January 12, 2012, Plaintiff the United States of America filed its complaint alleging that the Clinkscals failed to remit unpaid federal income taxes for tax years 1994-1997. Plaintiff alleges that it assessed unpaid taxes for tax year 1997 on July 2, 2001. [ECF No. 1 at ¶ 7](#). The Internal Revenue Code's ten-year limitation on the Internal Revenue Service's right to collect on the assessment through levy or judicial proceeding begins at the moment the

¹ The Clinkscals did not file a permissive reply memorandum. See [Local Rule 7.1\(e\)](#).

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assessment is made. *See* [26 U.S.C. § 6502\(a\)\(1\)](#). That would mean that the complaint should have been filed by July 2, 2011, with respect to the year 1997. Plaintiff, however, also alleges:

The running of the ten-year statutory period of limitations on collection of the unpaid liability for the period ending December 31, 1997, was suspended on two occasions due to the pendency of offers in compromise by the taxpayers on November 3, 2008 (rejected on March 16, 2009) and again on May 23, 2011, with the cumulative period of suspensions being no less than nine months so that the commencement of this action is timely with respect to the 1997 tax period. . . .

[ECF No. 1 at ¶ 8.](#)

Internal Revenue Code § 6331 provides that no levy or collection attempt may be made during the period that an Offer-in-Compromise is pending with the Secretary and during the 30 days thereafter if the Offer is rejected and not appealed. [26 U.S.C. § 6331\(k\)\(1\)](#). The Clinkscales made an Offer-in-Compromise on November 3, 2008, and it was rejected on March 16, 2009. The Clinkscales apparently did not appeal, thus the tolling period ended on April 15, 2009—30 days after the rejection. The period from November 3, 2008 to April 15, 2009 is the time during which the Offer was pending plus the 30-day provision after rejection, which amounts to a total of 163 days or a period of over five months.

The Clinkscales made a second Offer-in-Compromise on May 23, 2011. The Clinkscales summarily argue that the IRS rejected their second Offer-in-Compromise indicating the same was filed for delay purposes and never accepted the same into the Offer-in-Compromise program. According to the Clinkscales, since they were not accepted into the Offer-in-Compromise program for their second filing, no additional time extension is warranted. Therefore, Plaintiff only had until December 2011 to file suit against them. [ECF No. 4 at 2.](#)

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The legal standard applicable to a motion to dismiss and the legal standard applicable to a motion for summary judgment are decidedly different. A motion to dismiss under [Fed. R. Civ. P. 12\(b\)\(6\)](#) is designed to test the sufficiency of the complaint, [Riverview Health Institute LLC v. Medical Mutual of Ohio](#), 601 F.3d 505, 512 (6th Cir. 2010), and “all well-pled facts in the complaint must be accepted as true.” [Savoie v. Martin](#), 673 F.3d 488, 492 (6th Cir. 2012) (citing [Courie v. Alcoa Wheel & Forged Prods.](#), 577 F.3d 625, 629 (6th Cir. 2009), citing [Ashcraft v. Iqbal](#), 556 U.S. 662, 677-78 (2009)). Therefore, absent competent evidence to the contrary submitted at the summary judgment stage, both Offers-in-Compromise suspend the statute of limitations and extend the Collection Statute Expiration Date (“CSED”) by at least nine (9) months, which make the complaint filed January 12, 2012 timely.

Accordingly, Defendants Jantz S. and Shelia D. Clinkscale’s Motion to Dismiss ([ECF No. 4](#)) is denied. The Clinkscales are given until January 22, 2013 to file an Answer.

IT IS SO ORDERED.

January 10, 2013
Date

/s/ Benita Y. Pearson
Benita Y. Pearson
United States District Judge